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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

LANGOUET et al.

Appl. No.: 10/042,332

Filing Date: January 11, 2002

Title: Modular Test Adapter For Rapid Action
Engagement

Art Unit: 2829

Examiner: Russell M. Kobert

Atty. Docket: 3075.004

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants respectfully submit this Response to the Restriction Requirement dated July 14, 2004, which is the second restriction requirement issued by the Examiner in this application. Applicants respectfully traverse the Examiner's restriction requirement.

First, Applicants disagree with the Examiner's characterization that Applicants' amendment filed April 20, 2004 has necessitated new grounds for restriction. With respect to Groups I and II, the Examiner focuses on the tongue and groove structure of the claims in Group I, the gasket of Group II, and the flat surface of Group III. In Applicants' April 20, 2004 amendment, however, Applicants did not amend the tongue and groove structure of the claims in Group I, and in the claims in Group II, merely incorporated the gasket element of prior dependent claim 15 into independent claim 14. The only thing Applicants did in this regard was note that the Examiner failed to state any basis for

rejection claim 15 in the Examiner's January 20, 2004 Office Action. Applicants' act of pointing out the Examiner's failure to state a proper grounds of rejection in the prior Office Action does not constitute an amendment necessitating a new grounds of restriction.

Second, the Examiner's distinction between the claims in Group's II and III is not understood and is not explained in the Restriction Requirement. The first paragraph under section 3 of the Restriction Requirement recites an alleged distinction between the tongue and groove structure of claims 1 and 13 and the gasket structure recited in claim 14. The claims of Group III, however, do not recite any tongue and groove structure and thus are not distinct from the claims of Group II on that basis. The second paragraph under section 3 asserts a distinction between Groups III and I again on the basis of the tongue and groove structure recited in claims 1 and 13. This second paragraph, however, draws no distinction between Groups II and III. Accordingly, the Examiner has failed to state any distinction between Groups II and III and therefore should consider the claims in Groups II and III together in this application.

Third, MPEP 803.01 very clearly states that there are two criteria for a proper requirement for restriction: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner if restriction is required. The Examiner asserts that the tongue and groove structure of the claims in Group I and the gasket of the claims in Group II "have acquired a separate status in the art because of their recognized divergent subject matter," but the Examiner provides no explanation of such assertion nor why consideration of these claims would be any burden to the Examiner when the Examiner already did, or should have, considered these claim elements in the

January 4, 2004 Office Action. Since the claim elements at issue already have been examined, they cannot possibly create a serious burden on the Examiner.

Pursuant to 37 C.F.R. § 1.143, however, Applicants provisionally elect Group II (Claims 1-4, 13 and 21), or, in view of the Examiner's failure to draw any distinction between Groups II and III, Applicants provisionally elect Groups II and III.

The Commissioner is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 50-2837.

Respectfully submitted,

DeWitt Roggin PLLC

By: 

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Reg. No. 35,857

Date: July 21, 2004

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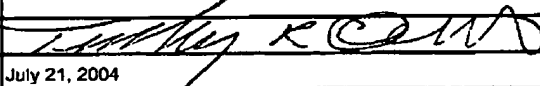
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/042,332	
	Filing Date	January 11, 2002	
	First Named Inventor	LANGOUET, Jean Luc	
	Art Unit	2829	
	Examiner Name	KOBERT, Russell	
Total Number of Pages in This Submission	4	Attorney Docket Number	3075.004

ENCLOSURES (Check all that apply)		
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Remarks _____		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Timothy R. DeWitt
Signature	
Date	July 21, 2004

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Date	July 21, 2004

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